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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13 *In the Matter of a Subpoena to Non-Party*
14 *Twitter, Inc.*

15 AARON RICH

16 Plaintiff,

17 v.

18 EDWARD BUTOWSKY, MATTHEW
19 COUCH, AMERICA FIRST MEDIA, and
THE WASHINGTON TIMES,

20 Defendants.

Case No. 4:20-mc-80081-DMR

(D.C. Case No. 1:18-cv-00681-RJL)

**REPLY IN SUPPORT OF MOTION TO
SEAL**

Date: June 4, 2020

Time: 9:00 a.m.

Dept:

Judge: Magistrate Judge Donna M. Ryu

1 Plaintiff Aaron Rich (“Movant”) respectfully submits this brief Reply to Twitter, Inc.’s
2 (“Twitter”) Response to Plaintiff’s Motion to Seal, Dkt. 10 (“Response”). Twitter’s Response
3 indicates that it takes no position with respect to Plaintiff’s Motion to Seal, but seeks to “to preserve
4 its rights in connection with and objections to Plaintiff’s position regarding the Declaration of
5 Compliance.” Dkt. 10 at 2.

6 Plaintiff submits this Reply only to notify the Court that “Plaintiff’s position regarding the
7 Declaration of Compliance” is required by the Protective Order issued by the Federal District Court
8 for the District of Columbia on June 21, 2018, in the underlying litigation, *Rich v. Butowsky et al*,
9 Civil Action No. 1:18-cv-00681-RJL (D.D.C) (the “D.C. Litigation”) (Dkt. 29). More specifically,
10 the Protective Order provides that for any documents designated as “Highly Confidential
11 Information – Attorneys’ Eyes Only,” parties may only show those documents to third parties in
12 limited circumstances, including where the designating party agrees to the production, as is the case
13 here. *See* Dkt. 9-6 at 6; D.C. Litigation, Dkt. 29 at 6. However, in that circumstance, the receiving
14 party must “first execute the Declaration of Compliance substantially in the form attached to this
15 Protective Order as Exhibit A.” *See* Dkt. 9-6 at 6, 17; D.C. Litigation, Dkt. 29 at 6, 17. As a result,
16 requiring Plaintiff to produce the relevant materials to Twitter’s counsel *without* a signed
17 Declaration of Compliance—in the form detailed in Exhibit A of the Protective Order—risks
18 placing Plaintiff in violation of the Protective Order.

19 What is more, Plaintiff is powerless to waive the relevant designations here, as they are not
20 his designations. Indeed, Defendant Edward Butowsky designated all the materials that Plaintiff
21 seeks to seal in the above-captioned matter. *See* Dkt. 8 at 3. Plaintiff is therefore unable to waive
22 those designations or their related protections. *See* Dkt. 9-6 at 6, 7; D.C. Litigation, Dkt. 29 at 6,
23 7. In turn, Plaintiff takes no position on whether the documents at issue are properly designated
24 and notes that any defense or enforcement of the designations at issue must come from Defendant
25 Butowsky.

Dated: May 19, 2020

WILLKIE FARR & GALLAGHER LLP

By: /s/ Benedict Y. Hur
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SAMUEL HALL

Attorneys for Plaintiff AARON RICH